

Item SP05-05 Response Form

Title: **Temporary Judges: Rules on Quality Assurance, Training, Ethics, and Administration** (adopt Cal. Rules of Court, rules 243.10-243.17, 243.19-243.21, 243.30, 243.32–243.34, and 6.740-6.746; amend and renumber rule 244 as rule 243.31 and rule 1727 as rule 243.18; repeal rules 880 and 1726; and repeal section 16.5 of the Standards of Judicial Administration)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, July 8, 2005
--

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee.
All comments will become part of the public record of the council's action..*

Title	Temporary Judges: Rules on Quality Assurance, Training, Ethics, and Administration (adopt Cal. Rules of Court, rules 243.10-243.17, 243.19-243.21, 243.30, 243.32-243.34, and 6.740-6.746; amend and renumber rule 244 as rule 243.31 and rule 1727 as rule 243.18; repeal rules 880 and 1726; and repeal section 16.5 of the Standards of Judicial Administration)
Summary	The proposed rules on temporary judges would provide a comprehensive set of rules governing the selection, appointment, supervision, assignment, and evaluation of court-appointed temporary judges in the California trial courts.
Source	Temporary Judges Working Group Hon. Robert B. Freedman and Hon. Douglas P. Miller, Co-chairs
Staff	Patrick O'Donnell, Senior Attorney, Office of the General Counsel, 415-865-7665, patrick.o'donnell@jud.ca.gov Robert Lowney, Managing Attorney, CJER, 415-865-7833, bob.lowney@jud.ca.gov
Discussion	<p><i>The Proposals</i></p> <p>The rules concerning temporary judges are currently scattered in different places in the California Rules of Court. Some relate only to temporary judges in the small claims court. The rules are incomplete and provide no systematic guidance for the trial courts or attorneys serving as court-appointed temporary judges.</p> <p>The Working Group on Temporary Judges established in 2004 recommends that the Judicial Council adopt a comprehensive set of rules that would govern the selection, training, appointment, supervision, assignment, and evaluation of court-appointed temporary judges.</p> <p>The proposed rules would provide assurance of the quality of temporary judging by establishing minimum education and experience requirements. They would provide guidance on avoiding conflicts and the appearance of impropriety. And the rules would provide direction to the trial courts on the administration of programs for court-appointed temporary judges.</p> <p>The proposed rules on temporary judges are organized in two sets: the rules in title 2 (Pretrial and Trial Rules) and the rules in title 6 (Judicial Administration Rules). If the proposed rules are adopted, section 16.5 of the Standards of Judicial Administration would be repealed as</p>

unnecessary. The proposals are described in detail below.¹

Proposed Rules in Title 2

Rules 243.10–243.21 and rules 243.30–243.34 on temporary judges would be included in title 2 (Pretrial and Trial Rules) of the California Rules of Court.²

A preliminary rule would provide a definition of “temporary judge.” (See rule 243.10.) This definition is based on the Supreme Court’s definition of “temporary judge” in the California Code of Judicial Ethics. Rule 243.10 would also state that a court-appointed temporary judge must be an active member of the State Bar. (See also rule 243.13(b)(1) (containing a similar provision)). Comments are invited on whether the rules should require court-appointed temporary judges to be active members of the State Bar.

Eleven rules (rules 243.11–243.21) would concern attorneys serving as court-appointed temporary judges. These rules would not apply to subordinate judicial officers, to retired judicial officers serving as temporary judges, or to attorneys designated by the courts to serve as temporary judges at the parties’ request. (See rule 243.11(a).)

Rule 243.11 would provide that trial courts may appoint an attorney as a temporary judge only if the attorney has satisfied the requirements for experience and training provided under the rules. (See rule 243.11(c).) An exception for appointment under extraordinary circumstances is provided, but it is limited to no more than 10 court days in a three-year period. (See rule 243.11(d).)

Rule 243.12 explains the purpose of the appointment of attorneys to serve as court-appointed temporary judges, states that this appointment is discretionary and does not create an employment relationship, and provides that all appointments are the responsibility of the presiding judge, who is to be assisted by a Temporary Judge Administrator. (See rule 243.12(a)–(d).)

Rule 243.13 states the basic requirements for court appointment as a temporary judge. First, the rule requires ten years of practice as a

¹ The text of the proposed rules and of repealed section 16.5 of the Standards is attached at the end of this Invitation to Comment.

² These rules should eventually be located in two or three separate chapters in the title.

member of the State Bar, unless for good cause the court permits an attorney with five years of practice to serve. (See rule 243.13(a).) This experience requirement is the same as the requirement for subordinate judicial officers. (See rule 6.660.)

Second, rule 243.13 provides that the court may appoint an attorney as a temporary judge only if the attorney is a member in good standing of the State Bar, is an active members of the State Bar, has not been convicted of a felony, has satisfied all the training requirements under the rules, and has satisfied all other general or specific requirements for appointment established by the court where the attorney will serve. (See rule 243.13(b).)

Third, rule 243.13 requires that specific training requirements be met for court appointment, including at least six hours of ethics training and three hours of substantive training in each subject area to which the temporary judge is assigned. (See rule 243.13(c).) Presiding judges are encouraged to require additional experience and training if feasible. (See rule 243.13(d).) Comments are specifically invited on (1) the amount of training required and (2) what training and procedures should be used to determine whether a judge or other person is qualified to provide ethics training.

The content of the substantive training required in ethics, small claims, traffic, and settlement is specified in rule 243.14.

The rules provide that attorneys may be appointed only after they have completed the educational requirements, subscribed the oath of office, and certified that they are aware of and will comply with canon 6 of the California Code of Judicial Ethics. (See rules 243.13(f) and 243.15.)

Rule 243.16 contains provisions about the circumstances under which an attorney who has served as a court-appointed temporary judge may or may not refer to that service in resumes, applications, advertisements, and other documents. (See rule 243.16(a)–(b).)

Rule 243.17 requires all attorneys serving as temporary judges to receive continuing education.

Rule 243.18 provides the procedure for stipulations to court-appointed temporary judges. It is based on current rule 1727 for small claims cases. This rule also provides procedures for withdrawing a stipulation: an application or motion showing good cause is required; a

declaration stating that a ruling is based on an error of fact or law does not establish good cause. (See rule 243.18(c).) This provision is based on current rule 244(g).

Rule 243.19 governs what a temporary judge must disclose to the parties. It is based on current rule 244(c).

Rule 243.20 prescribes the circumstances under which a court-appointed temporary judge is disqualified or limited from serving. The rule lists a set of mandatory disqualifications based on Code of Civil Procedure section 170.1. The disqualification provisions in this rule extend to domestic partners as well as spouses. (See rule 243.20(a)–(b).)

The rule provides additional limitations on appearances by temporary judges in family law and unlawful detainer cases, and in certain other particular circumstances. (See rule 243.20(c)–(d).)

The remaining subdivisions of rule 243.20 concern waiver of the disqualifications and limitations, the effect of late discovery of the grounds for disqualifications, notification of the court concerning disqualifications, and the procedure for parties to request disqualification. (See rule 243.20(e)–(h).)

Rule 243.21 provides that the duty to disclose and disqualify is continuing.

Rules 243.30–243.34 concern attorneys who are designated by the court as temporary judges at the parties’ request. These rules are based on current rule 244. The main changes are to organization and format.

In addition, the provision in current rule 244 that a filed oath and order, until revoked, may be used in any case in which the parties stipulate to the designated temporary judge would be eliminated. (See rule 243.31(c) (formerly rule 244(b)).)

Rule 243.31(d)–(e) (formerly rule 244(c)–(d)) has been changed so that most of the same rules on disclosure and disqualification that apply to court-appointed temporary judges would also apply to attorneys designated as temporary judges at the parties’ request.

Rule 244(h) on compensation has been placed in a separate new rule. (See rule 243.32.)

Proposed Rules in Title 6

Rules 6.740–6.746 on court-appointed temporary judges would be added to the Judicial Administration Rules.

Rule 6.740 would prescribe that each court that uses temporary judges must develop and institute a program to recruit, select, train, and evaluate attorneys who serve as court-appointed temporary judges. This is based on current section 16.5 of the Standards of Judicial Administration that applies to courts that use attorneys as temporary judges to hear small claims cases. The provision would be extended to all cases where a trial court uses temporary judges and would be made a rule.

Rule 6.741 provides that the presiding judge is responsible for the recruitment, selection, training, appointment, supervisions, assignment, and performance of court-appointed temporary judges. This rule is based on current rule 6.603(c)(4)(D). The new rule would add that, in performing these responsibilities, the presiding judge is assisted by the Temporary Judge Administrator as provided in rule 6.743. (See rule 6.741(a).) The rule would also provide that the presiding judge has the discretion to remove or discontinue the use of a court-appointed temporary judge at any time. (Rule 6.741(b).)

Rule 6.742 would govern the use of attorneys as court-appointed temporary judges. Subdivision (a) provides that the presiding judge is responsible for determining whether the court needs to use a temporary judge and, if so, for what purposes. Subdivision (b) prescribes the conditions under which the presiding judge may appoint an attorney as a court-appointed temporary judge: (1) the appointment of an attorney as a temporary judge is necessary to fill a judicial need in that court; (2) the attorney has been approved under rule 243.10 et seq.; (3) the appointment of the attorney does not result in any conflict of interest; and (4) there is no appearance of impropriety resulting from the appointment. The convenience of the court alone is not sufficient to warrant the use of court-appointed temporary judges.

Subdivision (c) of rule 6.742 would require each court to record and report quarterly on its use of attorneys serving as temporary judges. This regular recording and reporting will assist the courts in managing and monitoring their temporary judge programs. It will also provide information so that the judicial branch can establish the need for additional judicial appointments. It is anticipated that standardized forms and procedures will be developed for the courts to use to satisfy

these reporting requirements.

Rule 6.743 would require each presiding judge to designate a clerk, executive officer, or other employee knowledgeable about temporary judges to serve as the Temporary Judge Administrator in that court. (See rule 6.743(a).) The rule is intended to be sufficiently flexible so as to allow for a wide range of different designations depending on the size and scope of the temporary judge programs in the different courts. The Temporary Judge Administrator position would be similar to the ADR Administrator position, which is currently provided for in the Judicial Administration Rules. (See rule 1603.) The new rule lists in some detail the duties of the Temporary Judge Administrator. (See rule 6.743(b).)

Rule 6.744 would prescribe the application procedures for an attorney to be appointed as a court-appointed temporary judge, and would specify the information that must be provided on the application. It is anticipated that a standard application form will be developed for this purpose. The presiding judge, assisted by the Temporary Judge Administrator, must review applications and make appointments. This responsibility may be delegated to a committee of judges. (Rule 6.744(d).)

The rules would provide that the trial courts must review and monitor the performance of temporary judges. (See rule 6.745.) Also, each court must have procedures for receiving, investigating, and resolving complaints. (See rule 6.746.) This last rule is based on current section 16.5(d) of the Standards of Judicial Administration.

Repeal of Section 16.5 of the Standards of Judicial Administration

If the proposed rules are adopted, current section 16.5 of the Standards of Judicial Administration would be repealed. That section's provisions, which apply only to small claims cases, would no longer be necessary because most of them would be incorporated into the new rules applicable to all cases involving court-appointed temporary judges.

Operative Date

The Working Group recognizes that once these rules are adopted, the trial courts will require some time to train and appoint attorneys as temporary judges under the rules. Hence, comments are specifically invited on whether an operative date of July 1, 2006 for the rules would be practicable.

Requests for Comments on Specific Issues

In reviewing the proposals, the Judicial Council's Rules and Projects Committee has identified several issues on which it specifically invites comments from the public:

- Should the temporary judge rules on qualifications, training, stipulations, and conflicts in Title Two (Pretrial and Trial Rules) be applicable to attorneys who serve as temporary judges for alternative dispute resolution and case management purposes? (See rule 243.11 (scope of rules).)
- Should the rule providing criteria for presiding judges on the use of temporary judges by the courts in Title Six (Judicial Administration Rules) be applicable to temporary judges used for alternative dispute resolution and case management purposes? (See rule 6.742.)
- Do the rules distinguish sufficiently clearly between settlement attorneys and settlement temporary judges? (See Rule 243.13(c) and Advisory Committee Comment.)
- Should the Advisory Committee Comment to rule 243.13 concerning the use of attorneys who are not temporary judges to assist in settlement be made part of the rule?
- Should the rule governing the training of attorneys appointed as temporary judges for settlement purposes set forth in greater detail the distinction between settlement and mediation? (See rule 243.14(d)(3).)
- Should a party be permitted to withdraw a stipulation to a matter being tried by a temporary judge after the temporary judges has made a ruling? (See rules 243.18(c) and 243.20(h).)
- Should the required contents of the training for temporary judges be more flexible to provide that temporary judges do not need to be trained in certain listed subjects if they will not be adjudicating such issues? (See rule 243.14(b)-(c).)
- Is the rule providing for a Temporary Judge Administrator and prescribing the administrator's duties necessary? (See rule 6.743.) Instead of the proposed rule, should more discretion be given to presiding judges over how to administer the program in each county?

Attachments

**Proposed Rules on
Temporary Judges for Title 2
(Pretrial and Trial Rules)**

[Definition]

Rule 243.10. Definition of temporary judge

“Temporary judge” means an active or inactive member of the State Bar of California who, under article VI, section 21 of the California Constitution and the California Rules of Court, serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment, for each period of service or each case heard. A court-appointed temporary judge must be an active member of the State Bar.

(Note: The definition in the first sentence is based on the definition of “temporary judge” in the Code of Judicial Ethics. Comments are specifically invited in whether court-appointed temporary judges should be required to be active members of the State Bar.)

~~Rule 880. Temporary judges, referees, and privately compensated judges definitions~~

~~In these rules, unless the context or subject matter otherwise requires:~~

- ~~(1) “Temporary judge” means a member of the State Bar appointed pursuant to article VI, section 21 of the California Constitution and rule 244 or rule 532.~~
- ~~(2) Unless otherwise indicated, “referee” means a person appointed under section 638 or 639 of the Code of Civil Procedure.~~
- ~~(3) “Privately compensated” means that a temporary judge or referee is paid by the parties.~~

(Note: Rule 880 would be repealed. A new definition of “temporary judge” would be placed in new rule 243.10. The definition of “privately compensated” would be moved to new rule 243.30.)

[Court-Appointed Temporary Judges]

Rule 243.11. Temporary judges appointed by the trial courts

- (a) [Scope of rules]** Rules 243.11–243.21 apply to court-appointed attorneys who serve as temporary judges in the trial courts. The rules do not apply to

subordinate judicial officers, to retired judicial officers appointed by the courts to serve as temporary judges, or to attorneys designated by the courts to serve as temporary judges at the parties' request.

- (b) **[Definition of "court-appointed temporary judge"]** A "court-appointed temporary judge" means an attorney who has satisfied the requirements for appointment under rule 243.13 and has been appointed by the court to serve as a temporary judge in that court.
- (c) **[Appointment of attorneys as temporary judges]** Trial courts may appoint an attorney as a temporary judge only if the attorney has satisfied the requirements of rule 243.13.
- (d) **[Exception for extraordinary circumstances]** A presiding judge may appoint an attorney who is qualified under 243.13(a), but who has not satisfied the other requirements of that rule, only in case of extraordinary circumstances. Any appointment under this subdivision based on extraordinary circumstances must be made before the attorney serves as a temporary judge, must be recorded for reporting purposes under rule 6.742(c)(3), and must not last more than 10 court days in a three-year period.

Rule 243.12. Court appointment of temporary judges

- (a) **[Purpose of court appointment]** The purpose of court appointment of attorneys as temporary judges is to assist the public by providing the court with a panel of trained, qualified, and experienced attorneys who may serve as temporary judges at the discretion of the court if the court needs judicial assistance that it cannot provide using its full-time judicial officers.
- (b) **[Appointment and service discretionary]** Court-appointed attorneys are appointed and serve as temporary judges solely at the discretion of the presiding judge.
- (c) **[No employment relationship]** Court appointment and service of an attorney as a temporary judge do not establish an employment relationship between the court and the attorney.
- (d) **[Responsibility of the presiding judge for appointments]** The appointment of attorneys to serve as temporary judges is the responsibility of the presiding judge, who may designate another judge to perform this responsibility. In carrying out this responsibility, the presiding judge is assisted by a Temporary Judge Administrator as prescribed by rule 6.743.

Rule 243.13. Requirements for court appointment of an attorney to serve as a temporary judge

(a) [Experience required for appointment and service] The presiding judge may not appoint an attorney to serve as a temporary judge unless the attorney has been admitted to practice as a member of the State Bar of California for at least 10 years before the appointment. However, for good cause, the presiding judge may permit an attorney who has been admitted to practice for at least 5 years to serve as a temporary judge.

(b) [Conditions for appointment by the court] The presiding judge may appoint an attorney to serve as a temporary judge only if the attorney:

- (1) Is a member in good standing of the State Bar;
- (2) Is an active member of the State Bar;
- (3) Has not been convicted of a felony;
- (4) Has satisfied the education and training requirements in (c);
- (5) Has satisfied all other general conditions that the court may establish for appointment of an attorney as a temporary judge in that court; and
- (6) Has satisfied any additional conditions that the court may require for an attorney to be appointed as a temporary judge for a particular assignment or type of case in that court.

(c) [Education and training requirements] The presiding judge may appoint an attorney to serve as a temporary judge only if the following training requirements are satisfied:

- (1) (*Mandatory ethics training*) Before appointment, the attorney must have attended and successfully completed an ethics course of at least 6 hours duration on the subjects identified in rule 243.14(a) approved by the court in which the attorney will serve. This course must be taken in person and be taught by a qualified judicial officer or other person approved by the Administrative Office of the Courts.
- (2) (*Substantive training*) Before appointment, the attorney must have attended and successfully completed a course on the substantive law in each subject area concerning which the attorney will serve as a temporary judge. This course must be participatory, whether provided in person or

by broadcast or other means. The substantive courses have the following minimum requirements:

(A) *(Small claims)* An attorney serving as a temporary judge in small claims cases must have attended and successfully completed a course of at least 3 hours duration on the subjects identified in rule 243.14(b) approved by the court in which the attorney will serve.

(B) *(Traffic)* An attorney serving as a temporary judge in traffic court must have attended and completed a course of at least 3 hours duration on the subjects identified in rule 243.14(c) approved by the court in which the attorney will serve.

(C) *(Settlement)* An attorney serving as a temporary judge for settlement purposes must have attended and completed a course of at least 3 hours duration on the subjects identified in rule 243.14(d) approved by the court in which the attorney will serve.

(D) *(Other subject areas)* If the court assigns attorneys to serve as temporary judges in other substantive areas such as family law, juvenile law, or unlawful detainers, the court must determine what additional training is required and what additional courses are required before an attorney may serve as a temporary judge in each of those subject areas. The training required in each area must be of at least 3 hours' duration in each area. The court may also require that an attorney possess additional years of practical experience in each substantive area before being assigned to serve as a temporary judge in that subject area.

(d) **[Additional requirements]** The presiding judge in each court should establish additional experience and training requirements for temporary judges beyond those provided in this rule if it is feasible for the court to do so.

(e) **[Records of attendance]** A court that uses temporary judges must maintain records verifying that each attorney who serves as a temporary judge in that court has attended and successfully completed the courses required under this rule.

(f) **[Application and appointment]** To serve as a temporary judge, an attorney must complete the application prescribed in rule 6.744, must satisfy the requirements prescribed in this rule, and must satisfy such other requirements as the court appointing the attorney in its discretion may determine are appropriate.

Advisory Committee Comment

Subdivision (a). If a court determines that there is good cause under (a) to appoint an attorney with less than ten years of practice as a temporary judge, the attorney must still satisfy the other requirements of the rule before being appointed.

Subdivision (c). A court may use attorneys who are not temporary judges to assist in the settlement of cases. For example, attorneys may work under the presiding judge or individual judges and may assist them in settling cases. These attorneys would not perform any judicial functions such as entering a settlement on the record. Settlement attorneys who are not temporary judges are not required to satisfy the requirements of these rules, but must satisfy any requirements established by the court for attorneys who assist in the settlement of cases.

Rule 243.14. Contents of training programs

(a) [Ethics] Before the court may appoint an attorney to serve as a temporary judge in any type of case, the attorney must have received ethics training under rule 243.13(c)(1) in the following subjects:

- (1) Judicial ethics generally;
- (2) Conflicts;
- (3) Disclosures, disqualifications, and limitations on appearances;
- (4) Ex parte communications;
- (5) Bench demeanor and decorum;
- (6) Access, fairness, and elimination of bias; and
- (7) Self-represented litigants.

(b) [Small Claims] Before the court may appoint an attorney to serve as a temporary judge in small claims court, the attorney must have received training under rule 243.13(c)(2)(A) in the following subjects:

- (1) Small claims procedures and practices;
- (2) Consumer sales;
- (3) Vehicular sales, leasing, and repairs;
- (4) Credit and financing transactions;
- (5) Professional and occupational licensing;

1 (6) Tenant rent deposit law;

2
3 (7) Contract, warranty, tort, and negotiable instruments law; and

4
5 (8) Other subjects deemed appropriate by the presiding judge based on local
6 needs and conditions.

7
8 In addition, an attorney serving as a temporary judge in small claims cases
9 must be familiar with the publications identified in Code of Civil Procedure
10 section 116.930.

11
12 (c) [Traffic] Before the court may appoint an attorney to serve as a temporary
13 judge in traffic court, the attorney must have received training under rule
14 243.13(c)(2)(B) in the following subjects:

15
16 (1) Traffic court procedures and practices;

17
18 (2) Correctable violations;

19
20 (3) Court-ordered traffic school;

21
22 (4) Discovery;

23
24 (5) Driver licensing;

25
26 (6) Failure to appear;

27
28 (7) Mandatory insurance;

29
30 (8) Notice to appear citation forms;

31
32 (9) Red-light enforcement;

33
34 (10) Sentencing;

35
36 (11) Speed enforcement;

37
38 (12) Uniform bail and penalty schedules;

39
40 (13) Vehicle registration and licensing; and

41
42 (14) Other subjects deemed appropriate by the presiding judge based on local
43 needs and conditions.
44

(d) [Settlement] Before the court may appoint an attorney to serve as a temporary judge for settlement purposes, the attorney must have received training under rule 243.14(c)(2)(C) in the following subjects:

- (1) The role of the temporary judge in the settlement of civil and family law cases;
- (2) Effective settlement methods; and
- (3) The distinction between settlement and mediation.

Rule 243.15. Appointment of temporary judge

An attorney may serve as a temporary judge for the court only after the court has appointed him or her to serve. Before serving, the attorney must subscribe the oath of office and must certify that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and the California Rules of Court.

Rule 243.16. Permitted and prohibited uses of past service

(a) [Permitted uses of past service] An attorney who has served as a court-appointed temporary judge may describe his or her service as a temporary judge:

- (1) On applications to serve as a temporary judge, including applications in other courts;
- (2) On applications for employment or appointment to a judicial position;
- (3) On individual resumes or descriptive statements submitted in connection with an application for employment or for appointment or election to a judicial position; and
- (4) In response to requests for information about the public service in which the attorney has engaged.

(b) [Prohibited uses of past service] An attorney who has served as a court-appointed temporary judge may not use this service:

- (1) As a description of the attorney's primary occupation on ballot designations for judicial or other elected office;
- (2) In advertisements about the attorney's law firm or business; or

- (3) On the letterhead, business cards, or other documents that are distributed to the public identifying the attorney or the attorney's law firm.

Rule 243.17. Continuing education

- (a) **[Continuing education required]** Each attorney appointed as a temporary judge must attend and successfully complete every three years an ethics course and a course in each substantive area in which the attorney serves as a temporary judge. The courses must cover the same subjects and be of the same duration as the courses prescribed in rule 243.13(c). These courses must be approved by the court where the attorney is appointed.
- (b) **[Records of attendance]** A court that uses temporary judges must maintain records verifying that each attorney who serves as a temporary judge in that court has attended and successfully completed the courses required under this rule.

Rule ~~243.18, 1727~~. Stipulation to court-appointed temporary judge in a small claims case

- (a) **[Stipulation]** When the court has appointed and assigned an attorney to serve as a temporary judge in a case, ~~Notwithstanding rule 244, in small claims actions a party litigant shall be~~ is deemed to have stipulated to the matter being tried by a temporary judge, as defined in rule 880, if all of the following occur before the swearing in of the first witness ~~in the~~ at a small claims hearing, before the entry of a plea by the defendant at a traffic arraignment, or before the commencement of any other proceeding, all the following occur:
- (1) The court notifies the party ~~litigant~~ that a temporary judge will be hearing the matters for that calendar and provides the name of the person who will be serving as the temporary judge;
 - (2) The court notifies the party ~~litigant~~ that the temporary judge is a qualified member of the State Bar;
 - (3) The court notifies the party ~~litigant~~ that he or she has a right to have the matter heard before a ~~duly elected or appointed judicial officer judge, commissioner, or referee~~ of the court; and
 - (4) After notice, the party ~~litigant~~ fails to object to the matter being heard by a temporary judge.
- (b) **[Notice]** This notice may be given in the following forms:

(1) A conspicuous sign posted inside or just outside the courtroom, accompanied by oral notification or notification by videotape or audiotape by a court officer on the day of the hearing; or

(2) A written stipulation, signed by the party ~~litigant~~.

(c) [Application or motion to withdraw stipulation] An application or motion to withdraw a stipulation for the appointment of a temporary judge must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation, and must be heard by the presiding judge or a judge designated by the presiding judge. A declaration that a ruling by a temporary judge is based on error of fact or law does not establish good cause for withdrawing a stipulation. The application or motion must be served and filed, and the moving party must mail or deliver a copy to the temporary judge. If the application or motion for withdrawing the stipulation is based on grounds for the disqualification of, or limitation of the appearance by, the temporary judge first learned or arising after the temporary judge has made one or more rulings, but before the temporary judge has completed judicial action in the proceeding, the provisions of rule 243.20(f) apply.

Rule 243.19. Disclosures to the parties

In addition to any other disclosure required by law, a temporary judge must as soon as practical disclose to the parties:

(1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of canon 6 of the Code of Judicial Ethics; and

(2) Any personal or professional relationship known to the temporary judge that the temporary judge or temporary judge's law firm has or has had with a party, attorney, or law firm in the current case.

Rule 243.20. Disqualifications and limitations

(a) [Mandatory disqualifications in any proceeding] A temporary judge is disqualified to serve in a proceeding if any one or more of the following is true:

(1) The temporary judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) The temporary judge has served as an attorney in the proceeding;

- 1 (3) The temporary judge has given advice to, or served as an attorney for, a
2 party appearing before the court;
3
- 4 (4) The temporary judge has a financial interest in the subject matter in the
5 proceeding or in a party to the proceeding;
6
- 7 (5) The temporary judge, or the spouse or domestic partner of the temporary
8 judge, or a person within the third degree of relationship to either of them,
9 or the spouse or domestic partner of such a person is a party to the
10 proceeding or is an officer, director, or trustee of a party;
11
- 12 (6) An attorney or a spouse or domestic partner of an attorney in the
13 proceeding is the spouse, former spouse, domestic partner, former
14 domestic partner, child, sibling, or parent of the temporary judge or the
15 temporary judge's spouse or domestic partner or if such a person is
16 associated in the private practice of law with an attorney in the
17 proceeding;
18
- 19 (7) For any reason:
20
- 21 (A) The temporary judge believes his or her withdrawal from the
22 proceeding would further the interests of justice;
23
- 24 (B) The temporary judge believes there is a substantial doubt as to his or
25 her capacity to be impartial; or
26
- 27 (C) A person aware of the facts might reasonably entertain a doubt that
28 the temporary judge would be able to be impartial. Bias or prejudice
29 toward an attorney in the proceeding is ground for disqualification;
30
- 31 (8) The temporary judge has a current arrangement concerning prospective
32 employment or other compensated service as a dispute resolution neutral
33 or is participating in, or within the last two years has participated in,
34 negotiations regarding or concerning such prospective employment or
35 service, and either of the following applies:
36
- 37 (A) The arrangement is, or the discussion was, with a party to the
38 proceeding; or
39
- 40 (B) The matter before the temporary judge includes issues relating to the
41 enforcement of an agreement to submit a dispute to alternative
42 dispute resolution or the appointment or use of a dispute resolution
43 neutral.
44

(Note: If Assembly Bill 1322 is enacted this year, this subdivision would be revised to be consistent with the amended language of Code of Civil Procedure, section 170.1.)

(b) [Disqualification from appellate review] A temporary judge before whom a proceeding was tried or heard is disqualified from participating in any appellate review of that proceeding.

(c) [Limitations in family law and unlawful detainer proceedings] An attorney may not serve as a temporary judge in family law or unlawful detainer proceedings if in the same type of proceeding:

(1) The attorney holds himself or herself out to the public as representing exclusively one side; or

(2) The attorney represents one side in 90 percent or more of the cases in which he or she appears.

In addition, an attorney may not serve as a temporary judge in these types of cases if one party in the case is an attorney or is represented by an attorney and the other party or parties are not

(d) [Other Limitations] An attorney is prohibited from serving as a temporary judge:

(1) In a courthouse in any type of case on the same day that the attorney is appearing as an attorney or party in that same courthouse; or

(2) If the attorney is presently a party to any action or proceeding in the court on the same type of case.

For good cause, the presiding judge may waive the limitation under (2).

(e) Waiver of mandatory disqualifications and limitation

(1) A temporary judge who determines himself or herself to be disqualified or limited from serving under (a)–(d), after disclosing the basis for his or her disqualification or limitation on the record, may ask the parties and their attorneys whether they wish to waive the disqualification or limitation. The temporary judge must not seek to induce a waiver and must avoid any effort to discover which attorneys or parties favored or opposed a waiver. The waiver must be in writing, must recite the basis for the disqualification or limitation, and is effective only when signed by all parties and their attorneys and filed in the record.

- 1
2 (2) No waiver is permitted where the basis for the disqualification is any of
3 the following:
4
5 (A) The temporary judge has a personal bias or prejudice concerning a
6 party;
7
8 (B) The temporary judge has served as an attorney in the matter in
9 controversy; or
10
11 (C) The temporary judge has been a material witness in the controversy.
12
13 (f) **[Late discovery of grounds for disqualification or limitation]** In the event
14 that grounds for disqualification or limitation are first learned of or arise after
15 the temporary judge has made one or more rulings in a proceeding, but before
16 the temporary judge has completed judicial action in a proceeding, the
17 temporary judge, unless the disqualification or limitation is waived, must
18 disqualify himself or herself, but in the absence of good cause the rulings the
19 temporary judge has made up to that time must not be set aside by the judicial
20 officer or temporary judge who replaces the temporary judge.
21
22 (g) **[Notification of the court]** Whenever a temporary judge determines himself or
23 herself to be disqualified or limited from serving, the temporary judge must
24 notify the presiding judge or the judge designated by the presiding judge of his
25 or her withdrawal and must not further participate in the proceeding, unless his
26 or her disqualification or limitation is waived by the parties as provided in (e).
27
28 (h) **[Requests for disqualifications]** A party may request that a temporary judge
29 withdraw on the ground that he or she is disqualified or limited from serving. If
30 a temporary judge who should disqualify himself or herself or who is limited
31 from serving in a case fails to withdraw, a party may apply to the presiding
32 judge under rule 243.18(c) for a withdrawal of the stipulation. The presiding
33 judge or the judge designated by the presiding judge must determine whether
34 good cause exists for granting withdrawal of the stipulation.

Advisory Committee Comment

35
36
37
38 Under subdivisions (a) and (b) of this rule, the same grounds for disqualifications that apply to judicial officers
39 under Code of Civil Procedure section 170.1 apply to temporary judges, except that (a)(3) of this rule is stricter than
40 section 170.1(a)(2). The definitions of “personal knowledge,” “financial interest,” “party,” “dispute resolution
41 neutral,” and other terms in sections 170.1 and 170.5 apply to this rule. Subdivisions (c) and (d) of this rule are new
42 provisions that impose additional limitations on when a temporary judge may serve that are particularly applicable
43 to temporary judges. Under subdivisions (e)–(g), the provisions of section 170.3 on waiver of disqualifications, the
44 effect of late discovery of the grounds of disqualification, and notification of disqualification of judicial officers
45 apply to temporary judges. Under (h), requests for disqualification are handled as withdrawals of the stipulation to a
46 temporary judge and are ruled on by the presiding judge; this procedure is different from that in Code of Civil
47 Procedure section 170.3.

Rule 243.21. Continuing duty to disclose and disqualify

A temporary judge has a continuing duty to make the disclosures under rule 243.19 and to disqualify himself or herself under rule 243.20.

Rule 1726. Temporary judges in small claims cases

(a) [Qualifications] ~~To qualify for appointment as a temporary judge hearing matters in the small claims court or on appeal of a small claims judgment, a person shall have (1) been a member of the State Bar for at least five years immediately preceding appointment, (2) attended and completed a training program for temporary judges provided by the appointing court, and (3) become familiar with the publications identified in Code of Civil Procedure section 116.930.~~

(b) [Training program] ~~The training program shall cover judicial ethics, substantive law*, small claims procedures (including the wording of judgments), and the conduct of small claims hearings. Judicial ethics and the conduct of small claims hearings should be taught by a judge, if possible; substantive law and procedure shall be taught by any bench officer or other person experienced in small claims law and procedure.~~

~~*Substantive areas of law are intended to include the following: consumer sales; vehicular sales, leasing, and repairs; credit and financing transactions; professional and occupational licensing; landlord tenant law; contract, warranty, tort, and negotiable instruments law; and other subject areas deemed appropriate by the presiding judge, given local needs and conditions.~~

(Note: If rules 243.11–243.21 are adopted, current rule 1726 on temporary judges in small claims cases would no longer be necessary and would be repealed.)

[Temporary Judges Designated by the Court at the Request of the Parties]

Rule 243.30. Temporary judges requested by the parties

(a) [Application] Rules 243.30–243.34 apply to attorneys designated as temporary judges under article VI, section 21 of the California Constitution at the request of the parties. The attorneys covered by these rules include privately compensated temporary judges.

(b) [Definition] “Privately compensated” means that the temporary judge is paid by the parties.

- 1 **(c) [Limitation]** These rules do not apply to subordinate judicial officers or to
 2 attorneys who are appointed by the court to serve as temporary judges for the
 3 court.
 4

5 **Rule ~~243.31.244.~~ Temporary judge—stipulation, order, oath, assignment,**
 6 **compensation, and other matters disclosure, and disqualification**
 7

- 8 **(a) [Stipulation]** ~~Except as provided in rule 1727, When the parties request that an~~
 9 attorney be designated by the court to serve as a temporary judge on a case, the
 10 stipulation of the parties that a case may be tried by a temporary judge must be
 11 in writing and must state the name and office address of the member of the
 12 State Bar agreed upon on. It The stipulation must be submitted for approval to
 13 the presiding judge or to the supervising judge of a branch court or the judge
 14 designated by the presiding judge. This subdivision does not apply to the
 15 selection of a court commissioner to act as a temporary judge.
 16

- 17 **(b) [Order, and oath, and certification]** The order designating the temporary
 18 judge must be ~~endorsed upon the stipulation~~ signed by the presiding judge or
 19 the presiding judge's designee and refer to the stipulation. The stipulation and
 20 order which must then be filed. The temporary judge must take and subscribe
 21 the oath of office and certify that he or she is aware of and will comply with
 22 applicable provisions of canon 6 of the Code of Judicial Ethics and these rules
 23 the California Rules of Court. The oath and certification must be attached to
 24 the stipulation and order of designation, and the case will then be assigned to
 25 the temporary judge for trial.
 26

- 27 **(c) [When the temporary judge may proceed]** The temporary judge may
 28 proceed with the hearing, trial, and determination of the cause after the
 29 stipulation, order, oath, and certification is have been filed, the temporary
 30 judge may proceed with the hearing, trial, and determination of the case.
 31

32 ~~A filed oath and order, until revoked, may be used in any case in which the~~
 33 ~~parties stipulate to the designated temporary judge. The stipulation must~~
 34 ~~specify the filing date of the oath and order.~~
 35

36 ~~This subdivision does not apply to the selection of a court commissioner to act~~
 37 ~~as a temporary judge.~~
 38

- 39 **(e)(d) [Disclosure to the parties]** In addition to any other disclosure required by law,
 40 no later than five days after ~~appointment~~ designation as a temporary judge or,
 41 if the temporary judge is not aware of his or her ~~appointment~~ designation or of
 42 a matter subject to disclosure at that time, as soon as practicable thereafter, a
 43 temporary judge must disclose to the parties:
 44

- (1) Any matter subject to disclosure under subdivisions (D)(2)(f) and (D)(2)(g) of canon 6 of the Code of Judicial Ethics; and
- (2) Any ~~significant~~ personal or professional relationship known to the temporary judge that the temporary judge or the temporary judge's law firm has or has had with a party, attorney, or law firm in the instant current case, including the number and nature of any other proceedings in the past 24 months in which the temporary judge has been privately compensated by a party, attorney, law firm, or insurance company in the instant case for any services, including, but not limited to, service as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, settlement facilitator, or other alternative dispute resolution neutral.

~~(d)~~(e) **[Disqualification]** Requests for disqualification of temporary judges are determined as provided in Code of Civil Procedure sections 170.1, 170.2, 170.3, 170.4, and 170.5. The disqualification provisions of rule 243.20(a)–(b) and (e)–(g) apply to temporary judges who are designated by the court at the parties' request.

~~(e)~~ **[Use of court facilities, court personnel, and summoned jurors]** A party who has elected to use the services of a privately compensated temporary judge is deemed to have elected to proceed outside the courthouse, and court facilities, court personnel, or summoned jurors must not be used, except upon a finding by the presiding judge that their use would further the interests of justice.

For all matters pending before privately compensated temporary judges, the clerk must post a notice in the courthouse indicating the case name and number as well as the telephone number of a person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse.

~~(f)~~ **[Order for appropriate hearing site]** The presiding or supervising judge, on request of any person or on the judge's own motion, may order that a case before a privately compensated temporary judge must be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings. The request must be by letter with reasons stated and must be accompanied by a declaration that a copy of the request was mailed to each party, to the temporary judge, and to the clerk for placement in the file. The order may require that notice of trial or of other proceedings be given to the requesting party directly. An order for an appropriate hearing site is not grounds for withdrawal of a stipulation.

~~(g)(f)~~ **[Motion to withdraw stipulation or to seal records; complaint for intervention]** A motion to withdraw a stipulation for the appointment of a temporary judge must be supported by a declaration of facts establishing good cause for permitting the party to withdraw the stipulation, and must be heard by the presiding judge or a judge designated by the presiding judge. A declaration that a ruling is based on error of fact or law does not establish good cause for withdrawing a stipulation. Notice of the motion must be served and filed, and the moving party must mail or deliver a copy to the temporary judge. If the motion to withdraw the stipulation is based on grounds for the disqualification of the temporary judge first learned or arising after the temporary judge has made one or more rulings, but before the temporary judge has completed judicial action in the proceeding, the provisions of rule 243.20(f) apply. If the a motion to withdraw a stipulation is granted, the case must be transferred to the trial court docket the presiding judge must assign the case for hearing or trial as promptly as possible.

~~A motion to seal records in a cause before a privately compensated temporary judge must be served and filed and must be heard by the presiding judge or a judge designated by the presiding judge. The moving party must mail or deliver a copy of the motion or application to the temporary judge and to any person or organization who has requested that the case be heard at an appropriate hearing site.~~

~~A motion for leave to file a complaint for intervention in a cause before a privately compensated temporary judge must be served and filed, and must be assigned for hearing as a law and motion matter. The party seeking intervention must mail or deliver a copy of the motion to the temporary judge. If intervention is allowed, the case must be returned to the trial court docket unless all parties stipulate in the manner prescribed in subdivision (a) to proceed before the temporary judge.~~

~~(h) [Compensation] A temporary judge must not be compensated by the parties unless the parties agree in writing on a rate of compensation to be paid by the parties.~~

Rule 243.32. Compensation

A temporary judge selected by the parties may not be compensated unless the parties agree in writing on a rate of compensation that they will pay.

Rule 243.33. Notices, use of court facilities, and order for hearing site

(a) [Posting of notice regarding proceeding before privately compensated judge] For all matters pending before privately compensated temporary

judges, the clerk must post a notice in the courthouse indicating the case name and number as well as the telephone number of a person to contact to arrange for attendance at any proceeding that would be open to the public if held in a courthouse.

- (b) **[Use of court facilities, court personnel, and summoned jurors]** A party who has elected to use the services of a privately compensated judge is deemed to have elected to proceed outside the courtroom. Court facilities, court personnel, and summoned jurors may not be used in proceedings pending before a privately compensated judge except on a finding by the presiding judge that their use would further the interests of justice.
- (c) **[Order for appropriate hearing site]** The presiding judge, on request of any person or on the judge's own motion, may order that a case before a privately compensated temporary judge must be heard at a site easily accessible to the public and appropriate for seating those who have made known their plan to attend hearings. The request must be made by letter with reasons stated and must be accompanied by a declaration that a copy of the request was mailed to each party, to the temporary judge, and to the clerk for placement in the file. The order may require that notice of trial or of other proceedings be given to the requesting person directly. The granting of an order for an accessible and appropriate hearing site is not a ground for withdrawal of a stipulation.

Rule 243.34. Motions or applications to be heard by the court

- (a) **[Motion or application to seal records]** A motion to seal records in a cause before a privately compensated temporary judge must be filed with the court and must be served on all parties, the temporary judge, and any person or organization that has made known their intention to attend the hearing. The motion or application must be heard by the judge to whom the case is assigned or, if the case has not been assigned, to the presiding judge.
- (b) **[Motion for leave to file complaint for intervention]** A motion for leave to file a complaint for intervention in a cause before a privately compensated temporary judge must be filed with the court and served on all parties and the temporary judge. The motion must be heard by the judge to whom the case is assigned or, if the case has not been assigned, by the presiding judge. If intervention is allowed, the case must be returned to the trial court docket unless all parties stipulate in the manner prescribed in rule 243.31(a) to proceed before the temporary judge.

**Proposed Rules on Temporary Judges for Title 6
(Judicial Administration Rules)**

Rule 6.740. The responsibilities of the trial courts for temporary judge programs

Each trial court that uses temporary judges must develop, institute, and operate—by itself or in collaboration with another court or courts—a program to recruit, select, train, and evaluate attorneys qualified to serve as temporary judges.

Rule 6.741. Duties and authority of the presiding judge

- (a) **[General duties]** The presiding judge is responsible for the recruitment, selection, training, appointment, supervision, assignment, performance, and evaluation of court-appointed temporary judges. In carrying out these responsibilities, the presiding judge is assisted by the Temporary Judge Administrator as provided in rule 6.743.
- (b) **[Authority to remove or discontinue]** The presiding judge has the discretion to remove a court-appointed temporary judge or to discontinue using an attorney as a court-appointed temporary judge at any time.

Rule 6.742. Use of attorneys as court-appointed temporary judges

- (a) **[Responsibility of the presiding judge]** The presiding judge of the trial court is responsible for determining whether that court needs to use attorneys as temporary judges and, if so, the specific purposes for which attorneys are to be appointed as temporary judges.
- (b) **[Conditions for the use of court-appointed temporary judges]** The presiding judge may appoint an attorney as a court-appointed temporary judge only if all the following circumstances apply:
 - (1) The appointment of an attorney to serve as a temporary judge is necessary to fill a judicial need in that court. The convenience of the court alone is not sufficient to warrant the use of attorneys as temporary judges.
 - (2) The attorney serving as a temporary judge has been approved by the court where the attorney will serve under rule 243.10 et seq.;
 - (3) The appointment of the attorney as a temporary judge does not result in any conflict of interest; and
 - (4) There is no appearance of impropriety resulting from the appointment of the attorney to serve as a temporary judge.

(c) [Record and report of uses] Each trial court that uses attorneys as temporary judges must record and report to the Administrative Office of the Courts on a quarterly basis information concerning its use of them. The report must state:

(1) The number of attorneys used as temporary judges by that court each month;

(2) The number and types of cases, and the amount of time, on which the temporary judges were used each month; and

(3) Whether any of the appointments of temporary judges were made under the exception in rule 243.11(d) and, if so, the number of and reasons for these appointments.

Advisory Committee Comment

Subdivisions (a)–(b). These subdivisions provide that the presiding judge in each court is responsible for determining whether court-appointed temporary judges need to be used in that court, and these subdivisions furnish the criteria for determining when their use is proper. Under (b)(1), the use and appointment of court-appointed temporary judges must be based on judicial needs; the convenience of the court alone is not sufficient to warrant the use of attorneys as temporary judges. Under (b)(3), an attorney serving as a temporary judge would have a conflict of interest if any of the disqualifying factors enumerated in rule 243.20(a) or (b) exists. Under (b)(4), the test for the appearance of impropriety is whether a person aware of the facts might entertain a doubt that the judge would be able to act with integrity, impartiality, and competence. In addition to the factors listed in rule 243.20(a) and (b), an appearance of impropriety would be generated if any of the disqualifying circumstances identified in rule 243.20(c) or (d) are present.

Subdivision (c). Regular recording and reporting of information concerning each court's use of temporary judges assists the courts in monitoring and managing their use of temporary judges. This information is also important for establishing the need for additional judicial positions.

Rule 6.743. Administrator of Temporary Judges Program

(a) [Administrator] The presiding judge who appoints attorneys as temporary judges must designate a clerk, executive officer, or other court employee knowledgeable about temporary judges to serve as the Temporary Judge Administrator in that court.

(b) [Duties of Administrator] Under the supervision of the presiding judge, the Temporary Judge Administrator is responsible for the management of the temporary judges program in the court. The administrator's duties include:

(1) Receiving and processing applications from attorneys to serve as temporary judges with the court;

- (2) Verifying the information on the applications;
- (3) Assisting the presiding judge in the recruitment and selection of attorneys to serve as temporary judges;
- (4) Administering the court's program for the education and training of temporary judges;
- (5) Maintaining records of attendance and completion of required courses by all attorneys serving as temporary judges in the court;
- (6) Determining that attorneys have satisfied all the conditions required to be appointed as a temporary judge in that court, including continuing education requirements;
- (7) Maintaining a list of attorneys currently appointed and qualified to serve as temporary judges in the court;
- (8) Managing support services for temporary judges, such as providing mentoring programs and reference materials;
- (9) Receiving and processing complaints and other information concerning the performance of attorneys serving as temporary judges;
- (10) Assisting the presiding judge in identifying judicial needs that require the use of temporary judges and in addressing these needs; and
- (11) Maintaining records, gathering statistics, and preparing and transmitting quarterly reports on the court's use of temporary judges as required under rule 6.742(c).

Rule 6.744. Application procedures to serve as a court-appointed temporary judge

- (a) **[Application form]** Every attorney who applies for appointment as a temporary judge in a trial court must complete *Application to Serve as Temporary Judge* (form TJ-001) and any addendum to that form required by the court where the attorney is applying for an appointment.
- (b) **[Information required]** The attorney must provide all applicable information requested on the application form. This information must include:
 - (1) The attorney's name and contact information;
 - (2) The attorney's State Bar number;

- (3) Dates of admission to the State Bar of California and any other state bar associations;
- (4) Length of active membership in the State Bar and any other state bar associations and whether the attorney is presently an active member of the State Bar;
- (5) Whether the attorney is in good standing with the State Bar of California and any other state bar associations where the attorney has been admitted to practice;
- (6) Whether the attorney has ever been disciplined, or is the subject of a pending disciplinary proceeding, by the State Bar of California or by any other state bar association or court of record; and, if so, an explanation of the circumstances;
- (7) The areas of specialization for which the attorney has been certified in California or in any other state;
- (8) The attorney's major area or areas of practice;
- (9) Whether the attorney holds himself or herself out publicly as representing exclusively one side in any of the areas of litigation in which the attorney practices;
- (10) Whether the attorney represents one side in more than 90 percent of all cases in any areas of litigation in which the attorney specializes or concentrates his or her practice;
- (11) The location or locations in which the attorney principally practices;
- (12) How often the attorney appears in the court where he or she is applying to serve as a temporary judge;
- (13) A list of the attorney's previous service as a temporary judge in the court where the attorney is applying and in any other court;
- (14) Whether the attorney has ever been removed as a temporary judge by any court;
- (15) The types of cases on which the attorney is willing to serve as a temporary judge;

- 1 (16) Whether the attorney has ever been convicted of a felony or
 2 misdemeanor, or is a defendant in any pending felony or misdemeanor
 3 proceeding and, if so, a statement about the conviction or pending
 4 proceeding;
 5
 6 (17) Whether the attorney has been a party in any legal proceedings and, if so,
 7 a brief description of the proceedings;
 8
 9 (18) Information concerning any circumstances or conditions that would
 10 adversely affect or limit the attorney's ability to serve as a temporary
 11 judge;
 12
 13 (19) Any facts concerning the attorney's background that may reflect
 14 positively or negatively on the attorney or that should be disclosed to the
 15 court; and
 16
 17 (20) Such additional information as the court may require.
 18

19 **(c) Continuing duty to disclose** An attorney appointed by a court to serve as a
 20 temporary judge has a continuing duty to disclose to the court any material changes
 21 in facts or circumstances that affect his or her ability to serve as a temporary judge.
 22 The attorney must disclose the changes to the court before the next time the attorney
 23 is assigned to serve as a temporary judge.
 24

25 **(d) Review of application** The presiding judge, assisted by the Temporary Judge
 26 Administrator, must review all applications and determine whether each applicant is
 27 qualified, has satisfied the requirements of rule 243.13, and should be appointed as
 28 a temporary judge. The presiding judge may delegate this task to another judge or a
 29 committee of judges, assisted by the Temporary Judge Administrator. The decision
 30 whether to appoint, use, retrain, remove, or discontinue using any particular
 31 attorney as a temporary judge is at the sole discretion of the presiding judge.
 32

33 **Rule 6.745. Performance**

35 **(a) Review required** The court must review on a regular basis the performance of
 36 temporary judges appointed by that court.
 37

38 **(b) Monitoring performance** In monitoring and reviewing the performance of court-
 39 appointed temporary judges, the court may use direct observation, audiotaping of
 40 hearings, reports by court staff, comments from mentor judges, and such other
 41 means as may be helpful.
 42

43 **Rule 6.746. Complaints**

1 Each court must have procedures for receiving, investigating, and resolving
 2 complaints against court-appointed temporary judges.

3
 4 **Proposed Repeal of Standard of Judicial Administration**

5
 6 **§ 16.5. Temporary judges hearing small claims cases**

- 7
 8 ~~(a) Each court that uses temporary judges to hear small claims cases should~~
 9 ~~develop and monitor a program to recruit, select, train, and evaluate attorneys~~
 10 ~~qualified to serve as temporary judges.~~
 11
 12 ~~(b) The presiding judge should assign a judge or judges to participate in the~~
 13 ~~selection and evaluation of temporary judges.~~
 14
 15 ~~(c) Training for temporary judges should comply with the requirements of rule~~
 16 ~~1726.~~
 17
 18 ~~(d) Each court should establish procedures for receiving, investigating, and~~
 19 ~~resolving complaints against temporary judges. The presiding judge should~~
 20 ~~issue no further temporary judge assignments to an attorney who has failed to~~
 21 ~~perform the duties of a temporary judge in a competent, efficient, considerate,~~
 22 ~~and ethical manner.~~
 23
 24 ~~(e) Model programs for recruiting, selecting, training, and evaluating temporary~~
 25 ~~judges are available from the Administrative Office of the Courts.~~